APPENDIX

Supreme Court, U. S.
FILED
JUN 30 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-6027

RAYMOND WOOD, ET AL, PETITIONERS

v.

GEORGIA, RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF GEORGIA

PETITION FOR CERTIORARI FILED FEBRUARY 1, 1980
CERTIORARI GRANTED MAY 19, 1980

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SUMMARY OF RELEVANT DOCKET ENTRIES

Date	*Description of Document or Proceeding*
6/23/76	Accusation (2 counts) Edna Allen
6/23/76	Accusation (2 counts) James Tante
9/3/76	Accusation (2 counts) Raymond Wood
3/15/77	Verdict of the Jury-Edna Allen
3/15/77	Verdict of the Jury-James Tante
3/17/77	Verdict of the Jury-Raymond Wood
3/18/77	Sentence-Edna Allen
3/18/77	Sentence-James Tante
3/18/77	Sentence-Raymond Wood
11/23/78	Order of Probation-Edna Allen
11/23/78	Order of Probation-James Tante
11/23/78	Order of Probation-Raymond Wood
1/12/79	Petition For Revocation of Probation-Edna Allen
1/17/79	Petition For Revocation of Probation-James Tante
1/16/79	Petition For Revocation of Probation-Raymond Wood
2/8/79	Order on Probation Hearing-Edna Allen
2/8/79	Order on Probation Hearing-James Tante
2/8/79	Order on Probation Hearing-Raymond Wood
2/13/79	Joint Motions To Modify Conditions Of Probation And Order
2/13/79	Order of Revocation-Edna Allen
2/13/79	Order of Revocation-James Tante
2/13/79	Order of Revocation-Raymond Wood

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

Came in person before me I.W. Brown who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Edna Allen is guilty of the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, in that the said accused in the County of Fulton, on the 24th day of February 1976, did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled "Cheryl's Surrender" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated, Contrary to Law,

COUNT # 2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Edna Allen with the offense of Misdemeanor of a high and aggravated nature, for that the said accused in the County aforesaid, on the 24th day of February, 1976 did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled "Sex Before Marriage" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or described in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated,

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

Came in person before me I.W. Brown who, being duly sworn, deposes and says on oath that from the best of his knowledge and belief Jim Tante is guilty of the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, in that the said accused in the County of Fulton on the 24th day of February 1976 did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled, "Cheryl's Surrender" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominantly appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated, Contrary to Law,

COUNT #2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Jim Tante with the offense of Misdemeanor of a high and aggravated nature, for that the said accused in the County aforesaid, on the 24th day of February, 1976, did commit the offense of distributing obscene materials in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, exhibit a motion picture film entitled, "Sex Before Marriage" which film:

1. taken as a whole, to the average person, applying contemporary community standards predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated,

STATE COURT OF FULTON COUNTY

STATE OF GEORGIA, FULTON COUNTY

I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Raymond Wood with the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, for that the said accused in the County aforesaid, on the 4th day of June 1976, did commit the violation of distributing obscene material in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, sell to a person obscene material, to wit: a magazine entitled, "Little Girls Fuck Too!" which magazine:

1. taken as a whole, to the average person, applying contemporary community standards, predominately appeals to the prurient interest, that is a shameful or morbid interest in nudity, sex or excretion and

2. taken as a whole, lacks serious literary, artistic, political or scientific value, and

3. depicts or describes in a patently offensive way the following acts, to wit: acts of masturbation and acts involving lewd exhibition of the genitals, Contrary to Law,

COUNT #2: I, I.W. Brown in the name and behalf of the citizens of Georgia, charge and accuse Raymond Wood with the offense of Misdemeanor of a High and Aggravated Nature, for that the said accused in the County aforesaid, on the 4th day of June, 1976 did commit the violation of distributing obscene material in violation of Georgia Code Annotated Section 26-2101 in that the accused did, knowing the obscene nature thereof, sell to a person obscene material, to wit: a magazine entitled, "Torrid Tots," which magazine:

1. taken as a whole, to the average person, applying contemporary community standards, predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and,

2. taken as a whole, lacks serious literary, artistic, political or scientific value, and,

3. depicts or describes in a patently offensive way, the following acts, to wit: acts of sexual intercourse, heterosexual or homosexual, normal or perverted, actual or simulated and acts involving lewd exhibition of the genitals,

NAMES OF WITNESSES

I, W. Brown, Solicitor's office
Room 51, Criminal Court Fulton Co.

Jerry Baxter, D. A.s Office

Ticket	Warrant	Set on ____
5	000 +	By order of ____
		2 mos

PROBATED

No. 10,000

Criminal Court of Fulton County

5,000 A Bond — National Stand 5-4-77

JUNE Term, 19 76

THE STATE
VERSUS

MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE
DISTRIBUTING OBSCENE MATERIAL (2 cts.)

EDNA ALLEN
905 Brewery St., N. E.

D.L.No.	Race	Age	Sex
	W	51	F

Fingerprint Number 5837

Criminal Court Fulton County

March Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads Not Guilty. This 15 day of March 1977.

Leonard W. Pharr Jr.
Solicitor.

Defendant's Attorney.

We, the Jury, find the defendant guilty as charged on both counts

Date March 15, 1977

Marion A Epstein
Judge—Foreman.

____ Fine Paid

____ Deputy Sheriff

C. Lee Zell Defendant's Attorney

____ Prosecutor's Attorney

Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____

Set with Jim Tante
Special Instructions Redrawn from #161662

I. W. Brown Prosecutor

HINSON McAULIFFE, Solicitor General

Calendar Date and Number	
3/4 1	3/16 2

NAMES OF WITNESSES

I. W. Brown, Solicitor's Office
Room 51, Criminal Court Fulton Co.

Jerry Baxter, D. A.s office

Criminal Court Fulton County

March Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads NOT Guilty. This 17 day of March, 1977

Edmond W. Brodie
Solicitor.

Glenn Zell
Defendant's Attorney.

We, the Jury, find the defendant Guilty as charged on both counts

Date March 15, 1977

Maxine C. Epstein
Judge—Foreman.

A-1

Docket	Warrant	Set on ____ By order of ____
5	000 + 12 mos	

No. 164314

Criminal Court of Fulton County

5,000 P Bd
King JUNE

Term, 19

THE STATE
VERSUS

MISDEMEANOR
OF A HIGH AND
AGGRAVATED
NATURE
DISTRIBUTING
OBSCENE
MATERIAL

N/A/A Norcross Divor Trust
JIM TANTE
233 East 3rd St. Jackson, La.

	Race	Age	Sex (2 CTS)
D.L.No.	W	57	M
Fingerprint Number		6597	

_____ Fine Paid

_____ Deputy Sheriff

Glenn Zell
Glenn Zell
_____ Defendant's Attorney

_____ Prosecutor's Attorney

Reset to _____, 19__ By order Judge _____
Reset to _____, 19__ By order Judge _____
Reset to _____, 19__ By order Judge _____

Set with Leon Allen
Special Instructions _____
PROBATION FROM 161693

I. W. Brown
_____ Prosecutor 5/23

HINSON McAULIFFE, Solicitor General 41

Calendar Date and Number				43
8/4 3	11/2 2	3/14 2	5/2 1	2

NAMES OF WITNESSES

I. W. Brown, Solicitor's Office

J. B. Drummond, City officer
J. T. Cochran

~~Fred Crawford~~
~~2501 Grove, Drop N. E.~~
~~696-4980~~

Criminal Court Fulton County

MARCH Term, 1977

The Defendant in the within Accusation waives arraignment, list of witnesses, benefit of counsel, copy of accusation and pleads NOT Guilty. This 16th day of March, 1977

Solicitor.

Defendant's Attorney.

We, the Jury, find the defendant Guilty on both Counts 1 & 2.

Date 3/17/77

Foreman

A-14

Ticket	Warrant	Set on
CT	1 - 5,000	12 months
CT	2 - 5,000	12 months

166355

Criminal Court of Fulton County

10,000 A Bond
King

SEPTEMBER Term, 19

THE STATE
VERSUS

MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE (CONTAINING ~~PROBATE~~ MATERIAL)

RAYMOND WOOD
609 Federal Terrace

	Race	Age	Sex
D.L.No.	W	42	M
Fingerprint Number	78716		

Fine Paid

Deputy Sheriff

Defendant's Attorney

Prosecutor's Attorney

Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____
Reset to ____, 19__, By order Judge ____

Set with 163803 (A-10) (Terry Brooks)

Special Instructions

I. W. Brown
Prosecutor

HINSON McAULIFFE, Solicitor General

Date and Number			
11/2	3/17	2/3	3/23
16	12	3	62

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of _____ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

EDNA ALLEN

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be fined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

JIM TANTE

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 164314

STATE OF GEORGIA

v.

JIM TANTE

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.
( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.
(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___months.
( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.
( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

STATE OF GEORGIA

v.

RAYMOND WOOD

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___ months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____

WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

CRIMINAL COURT OF FULTON COUNTY

CASE NO. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD

Whereas the defendant in the above stated case has
( ) plead guilty to the offense stated herein,
(√) been found guilty of the offense stated herein,
it is considered, ordered and adjudged by the Court that the defendant

(a) pay a fine of five thousand dollars and be confined for a term of twelve months in the Fulton County jail or public works camp, or such other place as the defendant can be legally confined.

( ) Provided, that the confinement specified shall be suspended on payment of the fine and on condition defendant not again violate the laws of Georgia.

(√) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation and on condition that the defendant not again violate the laws of Georgia.

(b) be confined under the jurisdiction of the State Board of Corrections in the State Penitentiary, in a public works camp, or such other institution as the Director of Corrections may direct for a period of ___months.

( ) Provided, that the confinement specified is suspended on condition defendant not again violate the laws of Georgia.

( ) Provided, that the confinement specified shall be probated on the conditions set out in the Order of Probation in said case and on condition that defendant not again violate the laws of Georgia.

This 18 day of March, 1977.

/s/ _____
WILLIAM H. ALEXANDER
Judge, Criminal Court of Fulton County

ORDER OF PROBATION

Docket No. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above-named defendant has pleaded guilty (been convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (TWO COUNTS) and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for

Count 1—
Twelve (12) months, $5,000.00 fine and probated.
Count 2—
Twelve (12) months, and probated, concurrent.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of Twelve (12) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. Monthly

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the defendant pay as specified:

A fine of $5,000.00 is payable through the Adult Probation Office at the rate of $500.00 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on Appeal bond since March 18, 1977, probation is to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta, Ga., this the 23rd day of October 1978.

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____

EDNA ALLEN
Signature of Probationer

/s/ _____

JOHN L. MASK
Probation Officer

November 1, 1978

/s/ _____

Judge Presiding

WILLIAM H. ALEXANDER
Judge, State Court of Fulton County

ORDER OF PROBATION

Docket No. 164314

STATE OF GEORGIA

v.

JIM TANTE AKA NORVELL OLIVER TANTE, DEFENDANT

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above-named defendant has (been convicted of) the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, DISTRIBUTING OBSCENE MATERIAL (2 cts.). and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for

Ct. 1—twelve (12) months, $5000 fine, and probated;

Ct. 2—twelve (12) months and probated.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of twelve (12) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. monthly.

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the defendant pay as specified:

A fine of $5000 payable through the Adult Probation Office at a rate of $500 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on Appeal Bond since March 18, 1977, probation is to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta Ga., this the 23rd day of October 1978

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____
NORVELL O. TANTE
Signature of Probationer

/s/ _____
DAVID E. ODOM
Probation Officer

November 1, 1978

/s/ _____
Judge Presiding
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

ORDER OF PROBATION

Docket No. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD, DEFENDANT

STATE OF GEORGIA
COUNTY OF FULTON
IN THE STATE COURT

Whereas the above named defendant has (been convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (MHAN) and is hereby sentenced to ___ months in the ___ county jail, and in the Public Works Camp or at such other penal institution as the Director of Corrections may direct for ___

Count 1—Twelve (12) months, $5,000.00 fine, and probated.

Count 2—Twelve (12) months, $5,000.00 fine, and probated to follow Ct. 1.

The Court having examined the cause, it is ordered, adjudged, and decreed that the said sentence is hereby suspended and that the said defendant is placed on probation on this date for a period of twenty-four (24) months.

It is the Order of the Court that the probationer comply with the following general and special conditions of probation:

(1) Be of general good behavior, avoiding narcotics and excessive use of alcoholic beverages.

(2) Associate with people of reputable character and avoid places of bad reputation.

(3) Report to the Probation Officer as directed. monthly

(4) Permit such officer to visit him (her) at home or elsewhere.

(5) Work faithfully at suitable employment insofar as may be possible.

(6) Notify your Probation Officer immediately of any change of your address. Prior permission must be obtained to move outside the jurisdiction of the Court or leave the State for any period of time.

(7) Make reparation or restitution to any aggrieved person for the damage or loss caused by his (her) offense in the amount to be determined by the Court.

(8) Support his (her) legal dependents to the best of his (her) ability.

(9) Violate no penal laws of any State or the Federal Government.

It is further ordered by the Court that the Defendant pay as specified:

Fines totalling to $10,000.00 payable through the Adult Probation Department at a rate of $500.00 monthly until paid in full.

Other special conditions ordered by the Court are as follows: Defendant having been on appeal bond since March 18, 1977, probation to begin October 23, 1978.

It is the further order of the Court and the defendant is hereby advised that the Court may at any time revoke or modify any conditions of this probation or change the period of probation and may discharge the defendant from probation. The probationer shall be subject to arrest for violation of any condition of probation herein granted. If such probation is revoked, the Court may order the execution of the sentence which was originally imposed or any portion thereof in the manner provided by law.

Ordered at Atlanta Ga., this the 23rd day of October 1978.

This certifies that I completely understand the meaning of this order of probation and the foregoing conditions of probation.

/s/ _____
RAYMOND L. WOOD
Signature of Probationer

/s/ _____
R. R. WILLINHAM
Probation Officer

November 1, 1978

/s/ _____
Judge Presiding
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 164312

JANUARY TERM, 1979

THE STATE

v.

EDNA ALLEN

NOW COMES JACQUELINE L. TUMLIN PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against EDNA ALLEN.

I.

That the Defendant (was convicted of) the offense of DISTRIBUTING OBSCENE MATERIALS (TWO COUNTS) at the September Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Count 1—Twelve (12) months, $5,000.00 fine and probated.

Count 2—Twelve (12) months, and probated, concurrent.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: having failed to pay as directed by the Court.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the Defendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at

that time to show cause why probation should not be revoked.

This 12th day of January, 1979.

/s/ _____

JACQUELINE L. TUMLIN
Probation Officer
Fulton County, Georgia

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 164314

JANUARY TERM, 1979

THE STATE

v.

JIM TANTE AKA NORVELL OLIVER TANTE

NOW COMES DAVID E. ODOM PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against JIM TANTE aka Norvell Oliver Tante.

I.

That the Defendant entered a plea of guilty to (was convicted of) the offense of MISDEMEANOR OF A HIGH AND AGGRAVATED NATURE, DISTRIBUTING OBSCENE MATERIAL (2 Cts) at the October Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Count 1: Twelve (12) months, $5,000 fine and probated;

Count 2: Twelve (12) months, probated.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: Having failed to pay as directed.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the De-

fendant and that the Defendant be directed to appear before this Court on a day to be fixed by the Court and at that time to show cause why probation should not be revoked.

This 17th day of January, 1979.

/s/ _____

DAVID E. ODOM
Probation Officer
Fulton County, Georgia

PETITION FOR REVOCATION OF PROBATION
STATE COURT OF FULTON COUNTY

Docket No. 166388

JANUARY TERM, 1979

THE STATE

v.

RAYMOND WOOD

NOW COMES DIXON E. NASH PROBATION OFFICER OF FULTON COUNTY, in the name and behalf of the State of Georgia and brings this action against Raymond Wood.

I.

That the Defendant (was convicted of) the offense of DISTRIBUTING OBSCENE MATERIAL (MHAN) at the September Term, 1978.

II.

That this Court, on the 23rd day of October, 1978, did sentence the Defendant to serve as follows:

Ct.1—Twelve (12) months, $5,000.00 fine, and probated.

Ct. 2—Twelve (12) months, $5,000.00 fine, and probated to follow Ct. 1.

III.

That the Defendant has violated the terms and conditions of probation in the following particulars: Failure to pay as directed.

IV.

WHEREFORE, the State of Georgia prays that the citation for revocation of probation be served on the Defendant and that the Defendant be directed to appear be-

fore this Court on a day to be fixed by the Court and at that time to show cause why probation should not be revoked.

This 16th day of January, 1979.

/s/ _____

DIXON E. NASH
Probation Officer
Fulton County, Georgia

IN THE STATE COURT OF FULTON COUNTY

CASE NO. 164312

STATE OF GEORGIA

v.

EDNA ALLEN

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by Jacqueline L. Tumlin, Probation Officer of Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that she has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that she be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon her failure to do so, her probation shall stand revoked and she shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY

Case No. 164314

STATE OF GEORGIA

v.

JIM TANTE AKA NORVELL OLIVER TANTE

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by David E. Odom, Probation Officer of Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that he has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that he be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon his failure to do so, his probation shall stand revoked and he shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY

Case No. 166388

STATE OF GEORGIA

v.

RAYMOND WOOD

DISTRIBUTING OBSCENE MATERIAL

ORDER ON PROBATION HEARING—Filed Feb. 8, 1979

Petition having been filed by Dixon E. Nash, Probation Officer for Fulton County, in the name and behalf of the State of Georgia seeking to revoke probation in the above-captioned case, the same having come on regularly for hearing, the defendant being represented by counsel Glenn Zell, after hearing evidence and arguments and upon consideration, it is considered ordered and adjudged that the probationer has violated the conditions of probation in that he has failed to pay the fine as directed and is now in arrears in the amount of $1,500.00; however, it is considered to be to the best interest of all concerned that the probationer be allowed to pay the arrearage, and IT IS SO ORDERED that he be allowed to pay the arrearage by 3:00 o'clock p.m. on February 13, 1979 and upon his failure to do so, his probation shall stand revoked and he shall be required to serve the remainder of the sentences imposed in this case under confinement in the Fulton County Jail or Public Works Camp or such other place as the defendant can be legally confined.

This 8th day of February, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

Case No. 164312
Case No. 164314
Case No. 166388

THE STATE

v.

EDNA ALLEN, JAMES TANTE AND RAYMOND WOOD,
DEFENDANTS

JOINT MOTIONS TO MODIFY CONDITIONS OF PROBATION ORDER—Filed Feb. 12, 1979

NOW COME the above defendants and show as follows:

1.

That the fines imposed in the above cases were imposed pursuant to Ga. Code Ann. § 27-2506.1, and therefore, said fines were part of the sentence and are not conditions of the probation.

2.

Further, pursuant to Ga. Code Ann. § 27-2711, ten (10) conditions of probation are set out, plus the Court shall determine any other terms and conditions of probation that will help rehabilitate the probationers. *Gay* v. *State*, 101 Ga. App. 225; *George* v. *State*, 99 Ga. App. 892 (1).

3.

That the Court imposed a sentence of twelve (12) months on probation and a fine of five thousand ($5,000) Dollars, as to Tante and Allen, and imposed two twelve month sentences and fines totaling ten thousand ($10,000) dollars on Wood as part of the sentence, and not as a condition of probation; further, Ga. Code Ann. § 27-2711 does not permit the court to impose penalties such as fines as conditions of probation.

4.

Therefore, the revoking of the probation for failure to pay the fines are illegal and void since the fines are not conditions of probation and that the Court can only cite the defendants for contempt for failure to pay said fines.

5.

Further, that if the Court has imposed as a condition to the probation that the defendants pay said fines at the rate of $500 per month, then this is a void and illegal condition, and the Court is without authority to impose this type of condition of probation, and this condition should be set aside.

6.

Further, to convert the sentences from probation to imprisonment because of failure to pay said fines due to the lack of finances on the part of the defendants violates the equal protection and due process clauses of the Fourteenth Amendment of the U.S. Constitution and similar provisions of the Georgia Constitution.

WHEREFORE, Defendants pray that the condition of probation to pay said fines be set aside for the above reasons and for such other relief as the Court deems just and proper.

/s/ _____

GLENN ZELL, *Attorney for Defendant*

Suite 620
66 Luckie St., NW
Atlanta, Georgia 30303
(404) 524-6878

ORDER

The within and foregoing Motion having been read and considered, let the same be filed. After considering said Motion, IT IS HEREBY OVERRULED.

This 13 day of February, 1979.

/s/ _____

Honorable WILLIAM ALEXANDER,
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant EDNA ALLEN, be brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said EDNA ALLEN.

This 22 day of January, 1979.

/s/ _____

WILLIAM H. ALEXANDER, JUDGE

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This ___ day of ___, 19___.

/s/ _____

Deputy Sheriff—Probation Officer

EDNA ALLEN
FP#FC-3137

No. 164312

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Having failed to pay as directed by the Court, and a hearing having been held

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be revoked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of said sentence in the Fulton County Jail or the Public Works Camp.

This the 13th day of February, 1979.

/s/ _____
WILLIAM H. ALEXANDER,
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant JIM TANTE aka NORVELL OLIVER TANTE, brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said JIM TANTE aka NORVELL OLIVER TANTE.

This 22 day of January, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This 22nd day of January, 1979.

/s/ _____
DAVID E. ODOM
Probation Officer

Officer

JIM TANTE AKA NORVELL OLIVER TANTE
Docket No. 164314
APD #278440

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Having failed to pay as directed by the Court and a hearing having been held.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be re-

voked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of sentence in the Fulton County Jail or the Public Works Camp,

This the 13th day of February 1979

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

ORDER

The foregoing Petition read and considered. Let the Defendant Raymond Wood, be brought before me on the 26th day of January, 1979, at 9:00 A.M. in the Fulton County Courthouse for a hearing to determine whether his probated sentence should be revoked as prayed.

Let a copy of the foregoing Petition and this Order be served on the said Raymond Wood.

This 22 day of January, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

CERTIFICATE OF SERVICE

I have this day served a true and correct copy of the within Rule Nisi upon the named Defendant by handing the same to said Defendant in person.

This ___ day of ___, 19___.

/s/ _____ _____
Deputy Sheriff—Probation Officer

RAYMOND WOOD
FP#FC78718

Docket No. 166388

ORDER OF REVOCATION

WHEREAS, pursuant to notice given to the Defendant, a full hearing was conducted by this Court on the date aforesaid and the Court has adjudged that the terms of probation had been violated as set forth: Failure to pay as directed, having been represented by attorney Glen Zell, and a hearing having been held.

NOW, THEREFORE, it is ordered and adjudged that the probation provisions in said original sentence be revoked in accordance with Code Section 27-2713 (Ga. L. 1956, pp. 27, 32; Ga. L. 1960, p. 857) and the Defendant is hereby required to serve balance of said sentence in the Fulton County Jail or the Public Works Camp, and subject,

This the 13th Day of February, 1979.

/s/ _____
WILLIAM H. ALEXANDER, JUDGE
Judge, State Court of Fulton County

COURT OF APPEALS OF GEORGIA

57867. WOOD (RAYMOND) ET AL. *v.* THE STATE. Ba–102

OPINION—JUNE 5, 1979

BANKE, Judge.

Each of the three appellants was convicted of distributing obscene materials and each was sentenced to pay a fine and to serve 12 months on probation. Following the affirmance of these convictions on appeal, the trial court entered probation orders requiring each appellant to make payments of $500 per month towards payment of his or her fine as a condition of probation. Thereafter, each appellant's probation was revoked for failure to make the $500 payments as directed.

At the revocation hearing, it was established that none of the appellants had the financial resources to make the payments. On appeal, the appellants contend that to revoke their probation under these circumstances amounts to imprisoning them for their indigency, in violation of their rights under the Fourteenth Amendment of the United States Constitution. They further contend that the trial court was without authority under Georgia law to require payment of the fines as a condition of probation. *Held:*

1. In *Hunter* v. *Dean*, 240 Ga. 214 (239 SE2d 791) (1977), a requirement that a defendant pay a fine as a condition precedent to serving a sentence on probation was held not to violate the equal protection or due process provisions of the United States Constitution, even "when the defendant is indigent and unable to make immediate payment of the fine." See generally Code Ann. § 27–2709. The appellants contend that while this may be the law where payment of the fine is required as a condition precedent to probation, the situation is different where payment of the fine is required as a condition of the probation itself. We are unable to accord this delicate distinction the weight which the appellants seek to give it. In our view, *Hunter* controls this case and requires the affirmance of the trial court's ruling.

2. The fact that Code Ann. 27-2711 does not list payment of a validly imposed fine as one of the permissible conditions of probation does not require a different result. It is well settled that the conditions enumerated in that section are not exclusive, but the court may impose other requirements not specifically listed therein. See *George* v. *State*, 99 Ga. App. 892, 893 (109 SE2d 883) (1959); *Gay* v. *State*, 101 Ga. App. 225 (1) (113 SE2d 223) (1960).

Judgment affirmed. McMurray, P.J., and Underwood, J., concur.

Supreme Court of the United States

No. 79-6027

RAYMOND WOOD, ET AL., PETITIONERS,

v.

GEORGIA

On PETITION FOR WRIT OF CERTIORARI TO the Court of Appeals Court of the State of Georgia, No. 57867

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

MAY 19, 1980

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